

**WEST VIRGINIA LEGISLATIVE**  
*Performance Evaluation and Research Division*

**1900 Kanawha Blvd. East  
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**John Sylvia  
Director**

November 15, 2021

The Honorable Mark R. Maynard  
Room 217W, Bldg. 1  
1900 Kanawha Blvd. E.  
Charleston, WV 25305

The Honorable Brandon Steele  
Room 213E, Bldg. 1  
1900 Kanawha Blvd. E.  
Charleston, WV 25305

Dear Chairmen:

This letter-report addresses complaints raised by licensees of the West Virginia Board of Real Estate Appraisers (Board) claiming that the Board is not complying with West Virginia Code §30-38-17 which requires a public hearing or public comment period be held when it adopts new editions of the Uniform Standards of Professional Appraisal Practice (USPAP). Given the possible lack of public comment in the Board accepting new or revised standards for real estate appraisals, the Legislative Auditor directed PERD to evaluate the allegations pursuant to Chapter 4, Article 2, Section 5 of the West Virginia Code.

**Complaints Against the Board Were Received by PERD.**

From April through June of 2021, the Performance Evaluation and Research Division (PERD) received complaints from the public and licensees stating that the Board was not holding public hearings or public comment periods as required by W. Va. Code §30-38-17 before adopting the most current USPAP as the standards all appraisers must follow. The first complaint was received on April 29<sup>th</sup> from a California-based real estate appraiser alleging that the Board has not complied with the public hearing requirement for over a decade. The complainant stated that incorporating revised USPAP without a public hearing or a public comment period denied stakeholders the opportunity to voice their objections or concerns. The complainant also issued a press release of his concern which led to two licensees and one appraiser apprentice of the Board sending complaints to PERD. Two complaints expressed the same concern of public hearings not being held, while a third complaint was regarding an issue with licensure.

## **The USPAP Sets the Uniform Professional Appraisal Practice Standards.**

The Appraisal Foundation, a Washington D.C. nonprofit, composes, revises, and circulates the USPAP. The purpose of the USPAP is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. The primary goal of the USPAP is to explain the standards for the various types of appraisal services offered by appraisers. Congress adopted the first version of USPAP in 1989. PERD reviewed the revisions of USPAP since 2000. The USPAP was revised annually from 2000 to 2003. The 2004 USPAP should have been in effect until December 31, 2005, but a new version was ratified on January 1, 2005. Then a 2006 edition went into effect a year later. Since the 2006 edition of the USPAP was approved, this document has been on a two-year revision cycle. The 2020-2021 USPAP is effective through December 31, 2022, due to COVID-19 pandemic.

## **A Legal Opinion Determines that the Board Is Required to Hold Public Hearings or Public Comment Periods Before It Can Be Adopted USPAP.**

On June 29, 2021, PERD requested a legal opinion from Legislative Services, within the Office of the Legislative Auditor, to determine if the Board, in accordance with West Virginia Code §30-38-17, is to subject each amended version of USPAP to a public hearing or public comment period before it can be adopted. West Virginia Code §30-38-17 states that each real estate appraiser licensed or certified under this act shall comply with the generally accepted standards of professional appraisal practice, which are “...currently evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal foundation. The Board may after a public hearing or public comment period held in accordance with provisions of 29-A-3-1 et seq, adopt revised revisions or make modifications of or additions to the uniform standards of professional practice.”

**The legal opinion determined that a public hearing or public comment period is required prior to the adoption of an amended version of USPAP.** The legal opinion indicated that the Board’s legislative rule, CSR 190-2-14.1, emphasizes that appraisers should follow USPAP as a minimum requirement. This indicates that there are other requirements beyond USPAP that must be followed. Therefore, the legal opinion concludes that “*Even if the USPAP is silent as to the requirement of a public hearing or public comment period, state code is clear on this, and since the USPAP is the minimum standard, I believe this says that public hearings should take place.*”

Moreover, legislative rule CSR §190-1-5.1, which was repealed but similar in nature to W. Va. Code §30-38-17, suggests that public hearings on the USPAP were once being held:

Each real estate appraiser licensed or certified under these rules shall comply with the generally accepted standards of professionally appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of appraisal practice are currently evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Foundation. **After the holding of a public hearing, the Board may make modifications of or additions to these uniform standards.** [emphasis added]

The legal opinion states that “*This repealed section of code only strengthens the argument that a public hearing and public comment period should be held. Even though this particular section of code is now repealed, we are privy to the intent of the legislators at the timed [sic] this was passed and in code.*”

## **The Board Has Not Complied with WV Code §30-38-17 Since 2009.**

The Real Estate Appraisers Licensing and Certification Board was created by the Legislature in 1990 in response to the passage of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. A three-tiered regulatory system for real estate appraisers involving the federal government, states, and the Appraisal Foundation was created with the passage of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. On April 3, 2001, House Bill 2567 passed that repealed West Virginia Code §37-14, thus creating a new article known as the Real Estate Appraiser Licensing and Certification Act. West Virginia Code §30-38-17 has remained unchanged since its passage. After previous USPAP revisions of 2001, 2002, 2003, 2004, 2005, 2006 and 2008, the Board notified the Secretary of State's Office when it held public hearings, public comment periods or upon notice of an emergency rule related to adopt the revised USPAP. However, since an emergency rule filed on January 7, 2009, with a comment period ending on February 13, 2009, instead of holding public hearings or a public comment period for the newest edition of the USPAP, the Board has been incorporating it by reference. A February 2020 Newsletter published by the Board indicates that they are using the 2020-2021 version of the USPAP.

## **The Board Agrees with Legislative Services' Legal Opinion.**

On August 11, 2021, PERD held a meeting with the Board's executive director, counsel, and its chairperson to discuss the complaints filed against the Board. The Board was informed of the legal analysis done by Legislative Services in which it was concluded that the Board should be holding public hearings or public comments prior to adopting an amended version of USPAP. The Board confirmed that it agreed with the legal opinion. However, the Board stated reasons why it discontinued having public hearings. One reason cited is that invariably having a public comment period would not result in any change to USPAP. Since USPAP represents minimum standards for appraisers to follow, any change that could be made to USPAP would be more stringent requirements the State may want to impose on appraisers. The Board indicated that the likelihood of amending more stringent requirements to USPAP is unlikely. Furthermore, the Board stated that given the time it takes to amend legislative rules, another revised USPAP will soon be released, and using emergency rule-making authority would be inappropriate because such changes would not constitute an emergency. The Board also reported that oftentimes many of the changes to the USPAP are relatively benign and non-substantive. Finally, the Board reported that USPAP goes through a public comment state of its own through the Appraisal Foundation. Given these reasons, the Board stated that it decided to change the legislative rule in 2009 to include the term "adopted and incorporated in reference" when referring to the most current USPAP, thus identifying to licensees that it is to follow the most current version.

## **According to the Appraisal Subcommittee No States Go Above or Below USPAP.**

On August 18, 2021, PERD conducted an interview with the deputy executive director of the Appraisal Subcommittee. The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC) was created on August 9, 1989, pursuant of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. This entity is responsible for ensuring that the products real estate appraisers produce comply with USPAP and that real estate appraiser boards are treating applicants and appraisers equally. This agency conducts audits of state boards and agencies every two years. The Appraisal Subcommittee last audited the Board in 2019 and reported positive findings and recommended it remain on a two-year cycle. The Board's next audit is scheduled for November 15-17, 2021.

The deputy executive director reported that states are required to use USPAP to regulate real estate appraisers who perform appraisals in connection with federally-related transactions (FRTs). States can choose to use more stringent standards than those found in the USPAP, but less stringent standards are rarely chosen. If a state decides to use lower standards than those set in USPAP for evaluations, those assessments cannot be counted as experience for credentialing purposes. The executive director explained that no states use standards that go beyond or below those set in USPAP to regulate real estate appraisers. Examples of additional standards but not necessarily more stringent include requiring appraisers to report their appraisal fee in their report, requiring a specific way to sign the appraisal and or using a stamp, or even requiring that the trainee does not sign the report.

## Conclusion

**The requirement to have public hearings and public comment periods as stipulated in W. Va. Code §30-38-17 is clear and should be adhered to by the Board.** The Legislative Auditor understands the Board's reasons for concluding that public hearings are often not necessary for revised USPAPs; nevertheless, the law should not be ignored for such reasons. Instead, the Board should go before the Legislature to express its concerns and propose legislative changes. Although the Board may see having public hearings as counterproductive since the USPAP is likely not going to be enhanced by the Board, it is the Legislative Auditor's opinion that the Legislature saw good cause in allowing stakeholders the opportunity to express their concerns with revised USPAPs. **Therefore, the Legislative Auditor recommends that the Board follow W. Va. Code §30-38-17 and conduct public hearings or public comment periods when a new edition of the USPAP is up for adoption or present a viable alternative to the Legislature.**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Sincerely,



John Sylvia

# West Virginia Real Estate Appraiser Licensing and Certification Board

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Dean E. Dawson  
Board Chair

Patricia Rouse Pope  
Executive Director

October 1, 2021

John Sylvia  
Director  
West Virginia Legislature  
Performance Evaluation and Research Division  
1900 Kanawha Boulevard, East  
Building 1, Room W-314  
Charleston, West Virginia 25305-4890

Dear Mr. Sylvia:

This letter is presented by the West Virginia Real Estate Appraiser Licensing and Certification Board (WVREALCB) in response to your draft letter to the Co-chairs of the Joint Committee on Government Organization, dated September 13, 2021.

The WVREALCB attests to the Performance Evaluation and Research Division (PERD), The Honorable Mark R. Maynard, and The Honorable Brandon Steele, Co-chairs of the Joint Committee on Government Organization, the following:

1. The Board is aware of the complaints filed against it relating to WV Code §30-38-17.
2. The Board is aware PERD obtained a legal opinion regarding WV Code §30-38-17, and that opinion was that the Board is required to subject each amended version of Uniform Standard of Professional Appraisal Practice (USPAP) to a public hearing or public comment period before it can be adopted.
3. USPAP is a federal standard, issued by The Appraisal Foundation, authorized by Congress as the Source of Appraisal Standards and Appraiser Qualifications, the Board is mandated to enforce. Failure to enforce the current version of USPAP disqualifies an appraisal report from being used for federally related real estate transactions. See Anthony's response to letter at end of this one.
4. Each new USPAP edition must be applied and enforced by the Board.
5. The Board agrees with PERD's legal opinion that, if it were to fully adhere to WV Code §30-38-17, the change may not be made in time to keep up with the with the current amended version of USPAP.

6. USPAP does go through a public comment stage on its own through The Appraisal Foundation.
  - The Appraisal Foundation (TAF) puts each new edition draft out for public comment. The request for public comment is posted on the Foundation's website at the following link: [https://www.appraisalfoundation.org/imis/TAF/Standards/Exposure\\_Discussion\\_Drafts/TAF/Exposure\\_Drafts.aspx?hkey=d6d47266-eca5-4178-8919-2d3e827a5f36](https://www.appraisalfoundation.org/imis/TAF/Standards/Exposure_Discussion_Drafts/TAF/Exposure_Drafts.aspx?hkey=d6d47266-eca5-4178-8919-2d3e827a5f36)
  - Exposure Draft notices and requests for comments are posted on TAF website and sent via email to TAF's full mailing list. It is also posted on all TAF social media accounts.
  - The Appraisal Standards Board (ASB) invites questions about USPAP, commentary on USPAP, and proposed changes to USPAP from all interested parties, including appraisers, state enforcement agencies, users of appraisal services, and the public.
  - All received comments are posted on the Exposure Drafts webpage on TAF website.
  - USPAP issues sent to the ASB which are not adequately addressed in USPAP are further studied for possible potential changes. To obtain feedback on these proposed changes to USPAP, the ASB may issue a combination of surveys, Discussion Drafts, or Exposure Drafts with 30–60-day comment periods. The Board holds a webinar on each draft to explain the changes and their rationale and to listen to public questions and comments and solicit additional written public comments. The ASB reads and discusses all received comments. At a Public Meeting, after listening to additional oral comments, the ASB moves to an executive session where they decide whether to adopt changes to the next edition of USPAP. Once changes are adopted by the ASB, the Foundation Publication staff helps manage the publication process for the new USPAP.
7. If the Board were to file an emergency rule instead of going through the normal rule approval process, this could eventually lead to problems, since USPAP updates are not considered an emergency.
8. Once USPAP is amended, having a public comment period or public hearing will not change the final USPAP product.
9. The Board believes that any amended USPAP edition cannot be changed and is to fully abide by it. Therefore, there shouldn't exist a need to incorporate a new rule annually or biennially.
10. The Board reported to PERD that each adopted USPAP edition contains relatively benign and non-substantive changes.
11. The Board seated in 2009 made the decision to change the legislative rule that year to include the term "adopted and incorporated in reference" when referring to the most current USPAP edition, therefore identifying to each licensee that it is to follow the most current form.
12. The Board, to remedy the current situation, intends to request a rule change in the 2022 Legislative Session and have stricken from WV Code §30-38-17 the following sentence, "The board may, after a public hearing or public comment period held in accordance with provisions of article three, chapter twenty-nine-a of this code, adopt revised versions or make modifications of or additions to the uniform standards of professional appraisal practice. "

John Sylvia  
October 1, 2021  
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The WVREALCB appreciates the opportunity to present its response to PERDS's draft letter to the Co-chairs of the Joint Committee on Government Organization and offers, should PERD or any legislators have questions, its willingness to respond. Thank you.

Respectfully,



Patricia Rouse Pope  
Executive Director

C: Dean E. Dawson, Chair, WVREALCB  
Anthony D. Eates, Deputy WV Attorney General and WVREALCB Legal Counsel